

5th May, 1948.

UNITED NATIONS WAR CRIMES COMMISSION

Trial of Friedrich August Enkelstroth

Netherlands Special Court at Arnhem,

20th February, 1948.

(The following translation of the judgment has been made available to the Secretariat by Commander M. W. Mouton, Netherlands Representative on the Commission.)

W.L. No. 3973/47

Arnhem, 20th February 1948.

IN THE NAME OF THE QUEEN !

The Special Court at Arnhem has passed the following sentence in the case of the Public Prosecutor against:

Friedrich August ENKELSTROTH,

born 18th November 1906 at Twistringen, by profession Kriminalsekretär, Sicherheitspolizei, living at 61, Eimsbüttlerchaussee, Hamburg, now in custody in Arnhem prison,

the accused:

The Special Court;

In view of the investigation during the trial;

Having heard the demand of the Public Prosecutor;

Having heard the accused, who was assisted by Dr. WINTERS, barrister, Arnhem;

CONSIDERING that the accused has been charged:

that he, during the time of the war begun by Germany on 10th May 1940 against the Kingdom of the Netherlands, but before 15th May 1945, as an Untersturmführer and Kriminalsekretär in the German Sicherheitsdienst, at anyrate serving in some function in or with one of the branches of the German police system, at anyrate employed in one of the war-, state- or public services of the German enemy, intentionally, contrary to the laws and customs of war and /or of humanity,

- a. in or about September 1944, in Gelderland, in the execution of a plan previously conceived by him, deliberately and with malice aforethought killed G. W. GERSDORF, a defenceless arrestee in the power of the German Sicherheitsdienst, by intentionally and from a very short distance firing several shots, at anyrate one shot, from a loaded fire-arm at the aforesaid GERSDORF and thereby hitting him

in the head,

in the head, at anyrate in the body, fatally wounding him, as a result of which GERSDORF died immediately or shortly afterwards;

- b. in the neighbourhood of Arnhem, at anyrate in Gelderland, in or about October, 1944, in the execution of a plan previously conceived by him, deliberately and with malice aforethought killed the brothers A.M.KUIK and H.KUIK, defenceless arrestees in the power of the German Sicherheitsdienst, at anyrate two persons, at anyrate one person, by intentionally and from a very short distance firing several shots, at anyrate one shot, from a loaded fire-arm at each of the two KUIK brothers, at anyrate at each of the two aforesaid persons, at anyrate at one of the aforesaid persons, and so doing hitting them in the back of the head, at anyrate in the body, fatally wounding them (him), as a result of which the two KUIK brothers, at anyrate the aforesaid persons or person, died immediately or shortly afterwards;
- c. in or about the period from December 1944 to March 1945, at Heelsum, at anyrate in Gelderland, in the execution of a plan previously conceived by him, deliberately and with malice aforethought killed P.A.VARK, a defenceless arrestee in the power of the Sicherheitsdienst, by intentionally and from a very short distance firing several shots, at anyrate one shot, from a loaded fire-arm at the aforesaid VARK and so doing hitting him in the back of the head, at anyrate in the body, fatally wounding him, as a result of which the aforesaid VARK died immediately or shortly afterwards;  
all this described under a, b and c, although the accused knew or understood that neither GERSDORF nor the brothers KUIK, nor VARK, all mentioned above had previously been tried in the matter and been found guilty and sentenced by any judicial pronouncement;
- d. in the period from January 1944 to May 1945, in Gelderland and Noord-Brabant, intentionally ill-treated various people, among them G.Breteler, J.H.BUITER, J.RIETBERG, H.G.RIETBERG, H.JONGMAN, G.GREYDANUS, H.SATTER, M.GROOTHEEST, A.ROSEBOOM, G.van den TOP, M.GAASBEEK, J.E.LAUFMAN and F.van der ZOUW, all defenceless arrestees in the power of the German Sicherheitsdienst, at anyrate one or more of them, by violently beating them on the body with a hard object and/or his hand(s), or kicking them on the body with his shod foot (feet), these persons (this person) being painfully affected thereby, this with the object of compelling the aforesaid persons, at anyrate one or more of them, to give information about facts which, according to what he, accused, knew or suspected, were known to the aforesaid persons, at anyrate to one or more of them, and which facts were of importance to him in his function as mentioned above.

CONSIDERING that in the citation, section C., the victim was called "VARK" and that this should be "van VARK", the Court, regarding this as a clerical error, hereby corrects it, it being understood that the accused is not on that account prejudiced in his defence;

CONSIDERING that at the sitting of the Court the accused stated:

In 1944 and 1945 till the German army capitulated I was working as Untersturmführer and Kriminalsekretär with the German Sicherheitsdienst, a. One day about September 1944 I was sent for to Arnhem by my chief, Hauptsturmführer THOMSEN. The latter showed me a teleprinter message from the B.D.S. (Befehlshaber der Sicherheitsdienst) in The Hague, signed with the name DEPFNER.

In this it was said that the director of the TURMAC factories in Zevenaar was to be considered as a saboteur and terrorist. I am not quite sure if it also said that this director was to be shot dead but in any case THOMSEN ordered me to do it. I asked THOMSEN how I was to go about it whereupon he answered: "Just make it a question of escape". I was not told how I was to act, I could therefore do so in the way I thought best. I said to THOMSEN: "It shall be done". I then decided to take the director with me in a car and to shoot



him on the way. In order to carry out this intention, towards the evening I made the said director and the S.D. man Marinus JANSSEN take their place in a car which had meanwhile been ordered round for the purpose. I then told witness DENNER, who was acting as chauffeur, to drive in the direction of Woesthoeve. Arrived near Woesthoeve, between Arnhem and Apeldoorn, the car stopped. JANSSEN, the person I was to shoot, and myself, all thereupon got out. The three of us then walked a bit along the Apeldoorn road. As the person in question walked on a short way in front of me I drew out my loaded pistol and in order to carry out my intention as previously mentioned, aimed at the back of his head and when he was about 4 or 5 metres away from me, still aiming at the back of his head and with the intention of killing him, I fired a shot from the said pistol. He immediately fell to the ground and was obviously dead. I left the body of the man, who had made no attempt to escape and who was a defenceless prisoner in the power of the German Sicherheitsdienst, lying there on the road. I had not previously convinced myself whether the man I had shot had already been judged or whether he had been found guilty and sentenced by any judicial pronouncement. It was enough for me that my chief THOMSEN had given me the order in question.

- b. On 3rd November 1944, at the time that Schaarsbergen was being forcibly evacuated, I was doing duty as S.D. man in and near the grounds of the Rosendaal golf club near Arnhem. There were several people under arrest there at the time I was told, because they were said to have had pieces of English equipment in their possession. Towards mid-day that day I received orders from my chief THOMSEN to shoot two lads, obviously brothers, who had been arrested in connection with the above affair and who were then defenceless prisoners in the power of the German Sicherheitsdienst. I knew that these lads had not previously been tried and had not been found guilty and sentenced by any judicial pronouncement. I accepted the order in question and for the purpose of carrying out my intention of killing them, took them one by one to two different spots near the club house of the said golf club and there then, in the execution of the aforesaid plan, fired a shot from my loaded pistol at the back of their head from a very short distance whereupon they each immediately fell to the ground and were obviously dead. I left the bodies lying there.
- c. In November 1944 I was posted to the sub-commando of the S.D. at Lunteren. This commando was under HEINEMANN. The whole thing came under Hauptsturmführer THOMSEN, already mentioned. That month a certain van VARK was arrested by Johnny de DROOG, a member of the S.D., and taken to the Wormshof where he was shut up. He was interrogated by HEINEMANN who then made out a report for THOMSEN. The latter came to Lunteren one day and gave orders that van VARK was to be shot. He was accused of membership of an illegal organisation, the possession of weapons and the spreading of "Hetz-schriften" (inciting literature). THOMSEN gave me the order to shoot van VARK. I knew that van VARK had not previously been tried and that he had not been found guilty and sentenced by any judicial pronouncement. I then - it was about December 1944 - in order to carry out the said order took van VARK in a car, in which in addition to myself were the S.D. men JANSSEN and WACHENDORF, from Lunteren to a spot in the prohibited area near Healsum. When van VARK had got out I again asked him if he would say where the weapons we were looking for were but he refused to do so. We walked along with him then for a bit, JANSSEN and WACHENDORF in front of me with van VARK between them. I then, in order to carry out my intention to kill van VARK, deliberately from a very short distance aiming at the back of his head, shot him through the head with a bullet from my loaded pistol whereupon he fell to the ground and was obviously dead. The body of van VARK, who, when I thus shot and killed him, was a defenceless prisoner in the hands of the S.D.,

was thereupon -



was thereupon dragged into a hole in the ground dug for a shelter and this was then filled in and levelled with the ground.

- d. In the period from January 1944 to May 1945 I interrogated a number of persons in Gelderland and Noord-Brabant, who had been arrested and were defenceless in the power of the German S.D. Various of these arrested persons, who were acting too much as if they did not know a thing, did get some blows from me during their interrogation. I knew that ill-treatments such as the witnesses have stated during the trial that they received, could not be reconciled with the laws and customs of war and that they must be considered as contrary to humanity.

CONSIDERING that at the sitting of the Court the following have declared as witnesses:

1. Karl Louis DENNER:

- (a) In September 1944 I was chauffeur with the German S.D. in Arnhem. One day that month I received orders to bring a car round to the front of the S.D. building in Arnhem for a drive in the Amersfoort direction. The accused, the S.D. man JANSEN and a person I did not know then got into the car. The accused told me to drive along the mainroad towards Apeldoorn. Arrived near Beekbergen accused ordered me to stop and then he, JANSEN and the unknown man got out. They all walked along the Apeldoorn road. About 5 minutes later I heard a shot from the direction in which they had gone and shortly afterwards the accused and JANSEN returned without the unknown. By accused's orders we then drove back to Arnhem. A little while later I asked JANSEN what the unknown man had done and JANSEN said: "The director of the cigarette factory at Zevener refused to hand out cigarettes to a trainload of German wounded and then later did hand out cigarettes to English prisoners of war."

2. Gerrit BRETELIER:

- (a) On 17th June 1944 I was arrested at Almelo by some persons one of whom was accused. I was taken to Arnhem and on 19th June 1944 transferred to Vught where I found myself a defenceless prisoner in the power of the S.D.. Shortly after my arrival there I was repeatedly interrogated for three days running from 7 a.m. till 6 p.m., among other interrogators being the accused who wanted to know which were my illegal activities. When I refused to give any information about them the accused deliberately and several times struck me with a rubber truncheon on the face and seat while I stood there with my hands tied between my knees. During one of the interrogations he also deliberately cuffed my ears with his hand with the result that I got a suppurating ear which troubled me for 6 weeks. Further during one such interrogation the accused pulled me up by the hair from the ground where I was lying. I was bound while all these ill-treatments were going on. They caused me a great deal of pain.

3. Jan Hendrik BUITER:

- (a) On 17th June 1944 during a meeting of underground workers I was arrested by some persons one of whom was the accused. The latter interrogated me on the spot; he wanted to know the names of other illegal workers. During this interrogation the accused, when I would not mention any names, deliberately and violently hit me, and kicked me with his shoe, all this causing me pain. After this I was taken from there via Arnhem to Vught. The accused then became my "Sachbearbeiter". On 19th June 1944 the accused once more interrogated me on the aforesaid subject and when I again would give no information he, while I was bound, deliberately beat me in such a way with a rubber truncheon that I was crippled for some days. I was a defenceless prisoner in the power of the S.D. while the above mentioned ill-treatments which caused me great pain were going on.

4. Johan RIETBERG-



4. Johan RIETBERG:

- (d) On 16th June 1944 I was arrested at Zutphen where I was doing illegal work, by some persons one of whom was the accused. The accused interrogated me at the police station there about my illegal activities. When I would not give any information the accused struck me violently four times on the head with his clenched fist, which blows caused me much pain. I was then taken to Arnhem. There on 17th June 1944 I was again questioned by the accused on the same subject. When I again gave no information the accused deliberately gave me a series of blows on the head with his fist, to such an extent that I saw stars and was caused great pain. During all this ill-treatment I was a defenceless prisoner in the power of the S.D.

5. Hendrik Gerrit RIETBERG:

- (d) On 16th June 1944 I was arrested at Zutphen, where I was doing illegal work, by some persons one of whom was the accused. I was taken to Arnhem and there interrogated by the accused who wanted me to give him information about my illegal work. During this interrogation I was bound in such a way that I could only stand in a bent position. I refused to give the information required. Accused then became very angry. He took hold of a bamboo stick and deliberately gave me a series of violent blows with it on the head, back, seat and thighs which blows caused me great pain. I was shortly afterwards taken to Vught where the accused again, for the same reason as mentioned above, punched me forcibly and painfully, kicked me with his shod foot and beat me with a rubber truncheon. During all these ill-treatments I was a defenceless prisoner in the power of the S.D.

6. Hendrik JONGMAN:

- (d) On 16th June 1944 I was arrested at Zutphen where I was doing illegal work, by some persons one of whom was the accused. I was then taken to Arnhem where accused questioned me the same day about my illegal work. When I would not give the required information the accused deliberately struck me on the body with a hard object, this causing me great pain, doing this while I was bound in such a way that I could only stand in a bent position. On 19th June 1944 I was taken to Vught. During the 2½ months I remained there as a prisoner the accused interrogated me three more times. During these interrogations when I did not answer the way he wanted the accused repeatedly and deliberately hit me on the body with a hard object and kicked my sexual organs with his shod foot, both these acts causing me great pain. At the time of all the above ill-treatments I was a defenceless prisoner in the power of the S.D.

7. Hendrik SITTER:

- (d) After having been arrested by the S.D. as suspected of doing illegal work I was taken to Vught on 21st April 1944. There I was interrogated by a Netherlands S.D. man who wanted to know whether I had hidden American pilots. The accused was present at this interrogation. When I would not admit it the accused during this interrogation deliberately and forcibly hit me on the face and head with the flat of his hand and with a sort of rubber hammer, this causing me to suffer pain. During the time of the aforesaid ill-treatments I was a defenceless prisoner in the power of the S.D.

8. Maas GROOTHEEST:

- (d) On 29th March 1945 I was arrested and taken to the Wormshof at Lunteren. Some days later I was interrogated by the accused who wanted to know whether I worked for the underground. When I did not answer as he wanted, and while I was bound in such a way that I could only stand in a bent position, the accused deliberately and violently struck me on the knees with a stick and on my back with a strap, which blows caused me pain. It was only when I gave him some information that he stopped hitting me. During the above mentioned ill-treatment I was a defenceless prisoner in the power of the S.D.

9. Albertus ROSEBOOM-



9. Albertus ROSEBOOM:

- (a) On 29th March 1945 I was arrested by the S.D. and taken to the Wormshof at Lunteren. There I was interrogated a few days later, among others by the accused. He wanted me to say that I recognised dropped ammunition and weapons which were present at the Wormshof. I would not do so and accused then gave me a number of blows on the body with his hands and a stick which caused me a lot of pain. During this ill-treatment I was a defenceless prisoner in the power of the S.D.

10. Gerrit van den TOP:

- (a) On 8th April 1945 I was arrested by the S.D. and taken to the school in the Kraatsweg at Ede. I was then interrogated there by the accused who wanted to know from me where weapons were which had been dropped shortly before. When I did not give the required information I had to go and lie over a chair. The accused then sat on me and beat me deliberately on the legs and seat with a rubber truncheon which caused me great pain and through which I nearly lost consciousness. During this ill-treatment I was a defenceless prisoner in the power of the S.D.

11. Matthijs GAASBEEK:

- (a) On 8th April 1945 I was arrested by the S.D. and taken to the Wormshof. I was interrogated there by the accused who wanted to know what were the names of the various leaders of the underground movement. When I would not give any information the accused and the S.D. man JANSEN put my head through the noose of a rope which was fixed to the ceiling. The rope was pulled up so high that standing on tip-toe I was just able to breathe. One of the two then kicked my legs from under me so that I swung backwards and forwards. I could not breathe at all then and lost consciousness. When I had come to myself again I was lying on the ground. The accused <sup>then</sup> deliberately kicked me with his shod foot and beat me till I got up again and stood. Accused then, after JANSEN had smashed a chair over me, deliberately beat me with a leg of that chair until the leg was also in bits. All this ill-treatment, which was done to me while I was a defenceless prisoner in the power of the S.D., caused me great pain.

12. Feitze van der Zouw:

- (a) On 10th April 1945 I was arrested by the S.D. and taken to the Wormshof at Lunteren. I was interrogated there on 12th April 1945 by the accused who wanted to know where the weapons were hidden which had been dropped shortly before in the neighbourhood. I would not tell him. The accused then deliberately gave me a violent blow on the face with a hard object, through which blow I lost four teeth. He then, also intentionally, hit me on a leg and on my seat with a walking-stick, as a result of which the latter part of my body was blue and swollen. The accused then finally hit me deliberately with a stick just above the left ear so that I became and have remained, practically deaf in that ear. During the above ill-treatment I was a defenceless prisoner in the power of the S.D.

a. CONSIDERING that the statement dated 14th September 1944, made out on oath of office by Johannes de GROOT, 1st Lieutenant of Police at Apeldoorn (exhibit 2) contains in substance as an observation by the investigator that on 9th September 1944 at Apeldoorn he was informed by a German speaking person who said he was a "Führer van Dienst" belonging to the S.D., that the S.D. had been on the way to Amersfoort concentration camp with an arrested person; that between Arnhem and Apeldoorn the said arrested person had made an attempt to escape and was shot dead while trying this; that the body was near Stoppelberg road on the way from Arnhem to Apeldoorn; that the arrested man's name was Carel GERSDORF, director of the Turmac factory; that he, investigator, as a result of this report went to the

place indicated-



place indicated and there on the bicycle path on the west side of the Apeldoorn road he found a body on which were papers in the name of Carel GERSDORF, director-general of the Turmac factory; that there was a pool of blood next the head of the body; that holes, obviously caused by a bullet, were found in the back of the head and in the front under the right eye; that a post-mortem was carried out by Dr. J. J. A. ROEBARD according to whose statement the shot through the head had immediately proved fatal.

b. CONSIDERING that the statement dated 20th May 1945, made out on oath of office by Pieter Bastiaan STERCK, police detective and special constable at Arnhem, (exhibit 3<sup>4</sup>) contains in substance as a statement made by the investigator that on 5th November 1944, as a result of information received to the effect that the body of a young man was said to be lying in the grounds of the Rozendaal golf club on the Rozendaal road, municipality of Arnhem, he went there and following the directions of a certain FRIELING he saw the remains of a to judge by his appearance young man lying about 300 metres from the club-house of the afore-said golf club; that on examining the body he found that the back of the head showed a hole about 5 centimetres from the left ear, while in the forehead just above the right eye a hole could also be seen; that he took down an exact description of the body and of certain objects found on it and also took charge of the outer clothing; that on 6th November 1944 he was told that a second young man who had been shot, had been found in the aforesaid grounds; that he again went there and following the directions of a certain A. PAARDEKOOPEL, saw a second corpse lying about 150 metres away from the place where he had found the first one; that an opening could be seen in the back of the head, next to which opening dried blood could be seen; that he took down an exact description of this body also and took charge of the outer clothing and certain objects found on the body; that on 9th November 1944 a man came to him saying that he was looking for his two sons who had not returned home after the forcible evacuation of Schaarsbergen; that he, the investigator, made the man then give him a description of his two sons which practically tallied with that he had noted down of the two bodies he had found; that he then showed the man the clothing and objects he had seized whereupon the man said his name was Marten Jan KUIK and that he recognised the clothes and objects shown him as belonging to his sons, Hans KUIK and Albertus Marten KUIK.

c. CONSIDERING that the statement dated 8th February 1946, concerning among others the accused and made out on oath of office by Hendrik Marius van KOOTEN and Gustaaf Jacobus de VRIES, both police inspectors at Ede and special constables (statement Wormshof), contains in substance a statement made to the investigators by Marinus JANSEN, that after the action at Detering he met somebody who said he was Lieutenant DEKKER; that among other things DEKKER told him that a certain EVERS got illegal pamphlets from adjutant van VARK; that van VARK was thereupon arrested and held because it turned out that he was distributing "De Eendracht" (The Union) on a large scale, and pamphlets and a wireless were found at his house; that van VARK would not say much during his interrogation; that after van VARK had been in the Wormshof for about 3 weeks HEINEMANN decided that he was to be shot as he was a terrorist; that accused, WACHENDORF and he, JANSEN, then took van VARK with them in a car driven towards Heelsum where he turned into a side-road leading to the children's Home; that van VARK was here taken out of the car and accused then asked him if he would say where weapons belonging to the underground were hidden but van VARK said he did not know; that accused then made van VARK walk on in front of him and then shot him through the back of the head from close by with his pistol, van VARK being killed immediately; that they then dragged van VARK to a hole in the ground and filled this in with earth.

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c. CONSIDERING that the statement dated 4th June 1945 made out on oath of office against the accused among others, by Hendrik Marius van KOOTEN,

police inspector-



police inspector and special state constable, and Hendrikus Antonius van AREVEL, police detective and also special municipal constable exhibit C.2.), containing in substance a statement by the aforesaid police officers that as a result of a confession by Marinus JANSEN, a former agent of the German Sicherheitspolizei at Lunteren, that in December 1944 Pieter Adrianus van VARK, warrant officer 1st class, was taken by car by EISENSTROTH, formerly S.D. Untersturmführer, from the Wormshof at Lunteren where he was held as a prisoner, to Heelsum, where in the grounds of the "Kinderkoloniehuis (Children's Colony Home)" he was killed with a pistol shot and then buried, they, the above mentioned officers, started an investigation; that it was found that a man's body had been buried about 30 centimetres below the surface in the grounds of the Children's Home, immediately to the left of the drive up to the Koloniehuis (Colony House); that the corpse was in an advanced state of decomposition and was unrecognisable; that there was a gold ring with the initials J.S. on the right hand, and that among other things a spectacle case was found on the body; that they thereupon questioned Marinus JANSEN who stated: "That is Adjutant van VARK"; that they then heard Jansje SLIJHUIS, wife of P.A. van VARK, who declared: "From the description you give and from that which was found on the body, especially the ring and spectacle case, I am convinced that the body dug up by you is that of my dead husband";

CONSIDERING that the facts and circumstances in the above evidence, produce an equal number of causal facts and circumstances, on the grounds of which the Special Court deems proved and has been convinced that the accused committed that with which he has been charged, it being understood that he, in the Netherlands, during the time of the war begun by Germany on 10th May 1940 against the Kingdom of the Netherlands but before 15th May 1945, as an Untersturmführer and Kriminalsekretär in the German Sicherheitsdienst, intentionally and contrary to the laws and customs of war and of humanity:

- a. in September 1944 in Gelderland, in the execution of a plan previously conceived by him, intentionally and after calm deliberation killed G.W. GERSDORF, a defenceless arrestee in the power of the German Sicherheitsdienst, by intentionally and from a very short distance firing a shot at the aforesaid GERSDORF and thereby hitting him in the head, fatally wounding him, as a result of which GERSDORF died immediately or shortly afterwards;
- b. near Arnhem, about October 1944, in the execution of a plan previously conceived by him, intentionally and after calm deliberation killed the brothers A.H. KUIK and H. KUIK defenceless arrestees in the power of the German Sicherheitsdienst, by intentionally and from a very short distance firing a shot at each of the two KUIK brothers and hitting them in the back of the head, fatally wounding them, as a result of which the two KUIK brothers died immediately or shortly afterwards;
- c. in the period from December 1944 to March 1945 at Heelsum, in the execution of a plan previously conceived by him, intentionally and after calm deliberation killed P.A. van VARK, a defenceless arrestee in the power of the German Sicherheitsdienst, by intentionally and from a very short distance firing a shot at van VARK and thereby hitting him in the back of the head, fatally wounding him, as a result of which van VARK died immediately or shortly afterwards; all this as described under a. b. and c, although the accused knew, that neither GERSDORF, nor the brothers KUIK, nor van VARK had previously been tried in the matter, nor had been found guilty and sentenced by any judicial pronouncement;

d. in the period-



- d. in the period from January 1944 to May 1945, in Gelderland and Noordbrabant, intentionally ill-treated various people, among them G.BRETELIER, J.H.BUITER, J.RIETBERG, H.G.RIETBERG, H.JONGMAN, G.GREYDANUS, H.SATFER, M.GROOTHEEST, A. ROSEBOOM, G.van der TOP, M.GAASBEEK and F.van der ZOUW, defenceless arrestees in the power of the German Sicherheidsdienst, by violently beating them, also kicking the aforementioned BUITER, H.G.RIETBERG, JONGMAN and GAASBEEK with his right foot on the body, these persons being caused pain thereby, this with the object of compelling the aforesaid to give information about facts which, according to what he, accused, knew or suspected, were known to the aforesaid persons, and which facts were of importance to him in his function as mentioned above.

CONSIDERING that the Special Court does not deem proved anything with which the accused has further been charged except as has been declared above to have been proved, so that he must therefore be acquitted on those counts;

CONSIDERING that what has thus been proved constitutes the crime: During the time of the present war and before 15th May 1945, when in the public service of the enemy being guilty of any war crime or any crime against humanity, as expressed in article 6, b. and c., of the charter of the London Agreement of 8th August 1945, published by Royal Decree of 4th January 1946, Statute Book No.G.5, committed more than once, which crimes also contain the elements of punishable acts according to Netherlands law; provided for and made punishable by article 27<sup>a</sup> of the Extraordinary Penal Law Decree;

CONSIDERING that in coming to this conclusion the Special Court has taken into account among other things:

1. that the killing of GERSDORF, the brothers KUIK and van VARK, and the beating and kicking of the persons named in the substantiated statement, all carried out by the accused, declared under the circumstances as proved, come objectively under the definitions of a war crime and of a crime against humanity as given in the aforesaid charter:
2. that when committing the acts which have been declared proved against him the accused must have known that established under 1 insofar as the facts mentioned under a. and d. are concerned, and did know that appearing under b. and c., so that he acted deliberately;

CONSIDERING in fact that:

- (1) a. the executing of arrested persons by a police organisation without previous judicial proceedings, among which must be understood an objective investigation by some judicial authority as to the guilt and liability to punishment of the accused persons to whom the opportunity would be given to defend themselves with regard to specified facts laid to their charge, is in so flagrant a contradiction to every conception of justice that it can never be covered by laws and customs of war, nor be reconciled with principles of humanity, all of which must have been known to the accused as Untersturmführer in a police organisation. This opinion has been expressed in the Regulations concerning the laws and customs of war on land (The Hague Regulations) which for example, in article 30 even forbid that a spy caught in the act be punished without a previous judicial sentence, and in article 46 lays down that the occupant must respect the life of persons:
- b. in various Decrees issued by the occupant and partially resting on article 43 of the Regulation for Landwaffere, rules were laid down for the trial of "saboteurs". (Decree 195/1941 in connection with 138/1941 and 52/1940);

(2) a. Accused stated-



(2)a. Accused stated at the sitting:

1. that the order to shoot GERSDORF was given him as a result of a so-called "Fernschreiben" (teleprinter message), originating from the commander of the S.D. and containing that GERSDORF was to be treated as a "terrorist";
2. that he was ordered to deal with GERSDORF's death as an "attempt to escape";
3. that he shot GERSDORF and left the body lying on the road; on which three grounds the Court has concluded that in casu there was no question of carrying out a judicial sentence;
4. that when he shot the KUIK brothers and van VARK he knew that they had never been tried;
5. that he knew that the ill-treatments which the witnesses were said to have undergone could not be reconciled with the laws and customs of war and must be considered as contrary to humanity. Even if the accused had not confessed to it, it must all the same be accepted that he, who during the sitting gave the impression of being a man of normal development, must have understood that inflicting pain on arrested persons for the purpose of pressing them to make statements about their illegal work and that of others is contrary to every conception of humanity, and no laws of war could have sanctioned such (cf. art. 44 Regulations for Landwarfare);
6. Questioned at the sitting on what legal grounds the Sicherheitsdienst would have been justified in ill-treating arrested persons during an interrogation, the accused failed to answer.

CONSIDERING that the crimes qualified above also contain the elements of punishable acts according to Netherlands law, namely under a, b and c, murder committed more than once during the present war and before 15th May 1945, whereby the author made use of the power and opportunity offered him by the enemy occupation; provided for and made punishable in article 289 of the Penal Code in connection with article 11 of the Extraordinary Penal Law Decree;

under d, ill-treatment, committed more than once during the present war and before 15th May 1945, whereby the author made use of the power and opportunity offered him by the enemy occupation; provided for and made punishable in article 300 of the Penal Code in connection with the Extraordinary Penal Law Decree.

CONSIDERING that the accused is therefore punishable, no circumstance having appeared which would remove or exclude his liability to punishment;

CONSIDERING that the punishment to be announced is in accordance with the nature of the acts committed and the circumstances under which they were committed as these appeared at the sitting;

CONSIDERING especially in this connection that the accused was a prominent member of the S.D. group which lately operated from Wormshof and which by its acts of violence aroused the horror of every right-minded Dutchman; that the accused shot four Dutchmen, civilians, without any form of trial; that in addition, a deep impression has been made by accused's inhuman

treatment of -

6. that in a time of war he did not ask himself what were the laws and customs of war but did what he was ordered;



treatment of defenseless persons under arrest whom he, having been charged to carry out a police inquiry, ill-treated in a barbarous fashion while they were in no possibility of offering any resistance; that the Special Court is therefore of the unanimous opinion that the accused must suffer the severest penalty;

Seeing further articles 2, 57, 289 and 300 of the Penal Code and 1, 3, 11, 23 and 28 of the Extraordinary Penal Law Decree;

ADMINISTERING THE LAW

Declares the accused guilty of the crimes qualified and proved as above on that account punishable;

Sentences the accused therefore to the DEATH PENALTY;

Declares not proved anything with which accused has further or otherwise been charged except as has been declared above to have been proved;

Acquits him on those counts.

Sentence passed by

Dr.C.van Nievelt Vice-president

Dr.W.Vos Judge,

Lt.Col.C.A.van Beek, Military Judge

in the presence of Dr.C.B.Labouchere, substitute Clerk to the Court, and pronounced in open court at the public sitting of the aforesaid Special Court on 20th February 1948.

s/ C.B.Labouchere.

s/van Nievelt

s/Vos

s/van Beek.